

EXHIBIT 1

CALIFORNIA APPELLATE COURTS

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[Disposition](#) [Parties and Attorneys](#) [Trial Court](#)[Calendar](#)[Help](#)[Opinions](#)**Case Summary**[<< search results](#)**Trial Court Case:** 202097**Court of Appeal Case:** H019683**Division:****Case Caption:** The People v. Woodcock**Case Type:****Filing Date:** 02/05/1999**Oral Argument Date/Time:****Cross Referenced Cases**[H029069 Woodcock on Habeas Corpus](#)[H030450 Woodcock v. Superior Court \(People\)](#)[Click here to request automatic e-mail notifications about this case.](#)

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CALIFORNIA APPELLATE COURTS

Case Information



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The People v. Woodcock**Case Number H019683**
CJC
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Date	Description	Notes
02/18/1999	Notice of appeal lodged/received (criminal).	
02/18/1999	Counsel appointment order filed.	
02/26/1999	Note:	Left a message on Joanne's voice mail to call me back asap re status of ctrrs' rex's, etc.
03/02/1999	Telephone conversation with:	Ctrrs Pastorino & Boughton; Rex's to file txs are forthcoming
03/02/1999	Note:	I faxed a status rqst re rptr's tx to Ctr Holly Brooks this day; Her fax & telephone no. is (408) 370-2384
03/02/1999	Recommendation of counsel by SDAP filed.	Paul Carroll, Esq., is assctd as cnsl for applt
03/02/1999	Court reporter extension granted.	Reporter: Boughton, Sonia (008153). Deadline extended to: 03/29/99.
03/03/1999	Received fax informational copy of:	Ctr Brooks' rex to file tx (Hard copy to follow)
03/03/1999	Court reporter extension granted.	Reporter: Brooks, H. (091066). Deadline extended to: 03/29/99.
03/03/1999	Court reporter extension granted.	Reporter: Pastorino, Beverly (007312). Deadline extended to: 04/19/99.
03/30/1999	Telephone conversation with:	Joseph at appeals; Ctr Brooks has turned in her tx
03/31/1999	Note:	Left 2 voice mail messages on Ctr Boughton's voice mail re status of record preparation
04/01/1999	Telephone conversation with:	Joseph at appeals; Ctr Boughton's tx is in
04/21/1999	Notice of completion of transcripts received/filed.	Re record on appeal
		C-1; R-7

04/21/1999	Record on appeal filed.	
04/21/1999	Probation report filed.	
05/27/1999	35e letter received from:	Atty Carroll dtd 5/25/99 rqstng rptr's tx of proc of 9/24/98 where trl crt gave prlmnry jury instrctns bfre opening statements of the prosecution & the defense (See ltr)
06/03/1999	Notice to reporter to prepare transcript.	crr B. Pastorino dtd 6/1/99
06/30/1999	Telephone conversation with:	Manuel at appeals; Crrr Pastorino has not turned in augmtd tx
06/30/1999	Telephone conversation with:	Crrr Pastorino; She has suffered a work related injury; She will file a rex to file augmtd tx asap
07/08/1999	Note:	Crrr Pastorino's rex to file augmtd tx was mailed on 7/7/99 per Joanne
07/09/1999	Court reporter extension requested.	By Crrr Pastorino to 7/29/99 to file augmtd tx (1st)(Tct for order)
07/15/1999	Court reporter extension granted.	Crrr Pastorino's rex to 7/29/99 to file augmtd rptr's tx is grtd (1st)
07/27/1999	Court reporter extension requested.	By Crrr Pastorino to 8/27/99 to file rule 35(e) augmtd rcrd (2nd rex-Tct for order)
07/27/1999	Court reporter extension granted.	Crrr Pastorino grtd until 8/27/99 to file augmtd rptr's tx
08/30/1999	Telephone conversation with:	Crrr Pastorino; She is still very ill but she has a transcriber doing her work; She should have the augmtd rcrd in this case filed by Friday, 9/3/99; Will Call
09/10/1999	Notice of completion of transcripts received/filed.	Re augmented record on appeal
09/10/1999	Filed augmented record pursuant to rule 35(e).	R-1 (Rptr's tx of proc of 9/24/98 where trl crt gave prlmnry jury instrctns bfre the opening statements of the prosecution & the defense)
10/08/1999	Granted - extension of time.	(1) Attorney: Carroll, Paul Party: Woodcock, Michael
11/10/1999	Returned document for non-conformance.	Copy of Atty Carroll's ltr dtd 5/25/99 pur to rule 35(e); Ltr was rtrnd bcuz the 35e rqst has been complied with & augmtd rcrd has been rcvd & fld in this crt on 9/10/99 (see evnt #380)
11/12/1999	35e letter received from:	Atty Carroll rqstng rptr's tx of part of P&S hrg held on 1/8/99 & cpy of prlmnry instructions in notebooks gvn to each juror, etc. (see ltr)

11/19/1999	Notice to reporter to prepare transcript.	Ctrr Pastorino ntfd on 11/17/99 to prpre augmtd rptr's tx of 1/8/99
12/21/1999	Note:	I left message on Ctrr Pastorino's voice mail to call me back & advise re status of prptrn of augmtd rptr's tx
12/21/1999	Telephone conversation with:	Sue at appeals; The clk's office has prprd a crtfce that items rqstd by applt cannot be located; The crtfce will be sent along w/the rptr's tx when rptr's tx is rcvd frm ctrr Pastorino
12/22/1999	Telephone conversation with:	Ctrr Pastorino; She'll turn in augmtd rptr's tx on 12/23/99
12/27/1999	Telephone conversation with:	Joyce at appeals; Ctrr Pastorino turned in augmtd rptr's tx today
12/28/1999	Notice of completion of transcripts received/filed.	Re augmtd rcrd on appeal
12/28/1999	Filed augmented record pursuant to rule 35(e).	R-1 (rptr's tx of part of P&S hrg held on 1/8/99)
12/28/1999	Certificate of county clerk filed.	By Dep Co Clk Sue Tam indctng that after diligent search of crt fle she is unable to locate item #2 of applt's rqst (Prlmry instrctns)
01/21/2000	Request for dismissal filed.	By appellant (Tct for order)
01/21/2000	Dismissal order filed.	Pur to request of appellant, the appeal fld on 2/5/99 is dsmssd; Rmttr shall issue forthwith (CCC)
01/21/2000	Remittitur issued.	
01/21/2000	Case complete.	
01/21/2000	Record purged - to be shipped to state records center.	
10/19/2004	Shipped to state retention center, box # / list #:	83/79

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EXHIBIT 2

ORIGINAL

MC-275

Name Michael J. Woodcock
Folsom State Prison Bl-D2-24
Address P.O. Box 950
Folsom, California, 95763

FILED

APR 12 2005

CDC or ID Number H-27629

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
BY M.C. DEPUTY
S. CED

The Superior Court of California
Santa Clara County.
(Court)

MICHAEL JEROME Woodcock

Petitioner

vs.

M. Shepherd, Warden (acting)

Respondent

PETITION FOR WRIT OF HABEAS CORPUSNo. 202097

(To be supplied by the Clerk of the Court)

INSTRUCTIONS - READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

This petition concerns:

- | | |
|--|--|
| <input checked="" type="checkbox"/> A conviction | <input type="checkbox"/> Parole |
| <input type="checkbox"/> A sentence | <input type="checkbox"/> Credits |
| <input type="checkbox"/> Jail or prison conditions | <input type="checkbox"/> Prison discipline |
| <input type="checkbox"/> Other (specify): _____ | |

1. Your name: Michael Jerome Woodcock
2. Where are you incarcerated? Folsom State Prison (FSP)
3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reasons for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

ASSAULT BY MEANS OF FORCE likely to produce great bodily injury.
And enhancement for inflicting great bodily injury (GBI).

- b. Penal or other code sections: 245(A)(1), 12022.7(A) And 1203(e)(3),
- c. Name and location of sentencing or committing court: THE SUPERIOR COURT OF CALIFORNIA
County of Santa Clara, 191 North First Street, San Jose, CA, 95113.
- d. Case number: 202097
- e. Date convicted or committed: September 30, 1998
- f. Date sentenced: February 4, 1999
- g. Length of sentence: 28 years to life
- h. When do you expect to be released? YEAR 2025

- i. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:
Denise M. Lee, Alternate Defender Office, 4 North 2nd. Street
Suite 1270. SAN JOSE, CA, 95113.

4. What was the LAST plea you entered? (check one)

Not guilty Guilty Nolo Contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

The Trial Court instructed the jury on a misinterpretation of the law.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

(SEE ATTACHED WRIT OF HABEAS CORPUS).

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

(SEE ATTACHED WRIT OF HABEAS CORPUS).

7. Ground 2 or Ground _____ (*if applicable*):

a. *Supporting facts:*

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Name of Court, Court of Appeal or Appellate Dept. or Superior Court:
THE COURT OF APPEAL, STATE OF CALIFORNIA, SIXTH APPELLATE DISTRICT.

b. Result: Abandoned

c. Date of decision: JANUARY 21, 2000

d. Case number or citation of opinion, if known:

CASE no. H019683

e. Issues raised: (1) none

(2)

(3)

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

Paul V. Carrol, 5 Manor Place, Menlo Park, CA, 94025

9. Did you seek review in the California Supreme Court? Yes. No. If yes, give the following information:

a. Result:

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal: This claim is based on a recent judicial decision.

in People v. Lewis (2004) where a clarification of the law revealed the fact that petitioner was convicted under a misinterpreted penal statute. This new reinterpretation of the law was not available at the time of appeal.

- #### **11. Administrative Review:**

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal. App.3d 500 [125 Cal. Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? Yes. No.

Attach documents that show you have exhausted your administrative remedies

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) THIS CLAIM IS BASED ON THE RECENT JUDICIAL DECISION IN PEOPLE V. LEWIS (2004) 120 CAL. APP. 4TH 837 WHERE THE CLARIFICATION OF LAW REVEALED THE FACT THAT PETITIONER WAS CONVICTED UNDER A MISINTERPRETED PENAL STATUTE. THE CLARIFICATION IN THE LAW WAS NOT AVAILABLE DURING PETITIONER'S TIME ON APPEAL.

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: April 3, 05



(SIGNATURE OF PÉTITIONER)

1 Michael J. Woodcock
 2 Folsom STATE Prison
 3 D.O. Box 950
 4 FOLSOM, CALIFORNIA 95763
 5 CDC No# H-27629

6 In PRO PER:
 7

FILED

APR 12 2005

KIRI TORRE
 Chief Executive Officer/Clerk
 Superior Court of CA County of Santa Clara
 BY MC DEPUTY
 S. CHUA

In The Superior Court of California
 For Santa Clara County

10
 11 In RE } CASE No. # 202097
 12 Michael J. Woodcock, } Petition For Writ Of HABEAS CORPUS
 13 On HABEAS CORPUS. } And Memorandum of Points And
 14 Authorities In Support THEREOF.

15 1.
 16

Introduction

17 1. THE QUESTION PRESENTED IS WHETHER PETITIONER'S SIXTH
 18 AMENDMENT RIGHTS WERE VIOLATED WHEN THE TRIAL COURT'S
 19 MISINTERPRETATIONAL INSTRUCTION TO THE JURY AFFECTED ITS ABILITY TO
 20 FIND BEYOND A REASONABLE DOUBT, ESSENTIAL ELEMENTS OF AN ALLEGATION.
 21 THE TRIAL COURT INSTRUCTED THE JURY THAT ITS QUESTION UNDER PENAL
 22 CODE SECTIONS 1203(e)(3) AND 12022.7, WERE LEGALLY SYNONYMOUS.
 23 PRIOR TO THE RECENT DECISION IN PEOPLE V. LEWIS (2004) 120 CAL. APP.
 24 4TH 837, MOST JUDGES, PROSECUTORS, AND ATTORNEYS, ASSUMED THIS
 25 WAS TRUE. HOWEVER, LEWIS HAS CONCLUDED THEY ARE NOT LEGALLY
 26 SYNONYMOUS. THIS CLARIFICATION OF THE LAW HAS SHED ERRORS OF
 27 CONSTITUTIONAL DIMENSIONS UPON PETITIONER'S CONVICTION THAT COULD

1 not have been discovered through due diligence when his conviction was
2 open to challenge.

II. Parties.

5 2. Petitioner, Michael J. Woodcock, is a prisoner of the State
6 of California and currently confined in Folsom State prison.

7 3. Respondent, M. Shepherd, is the WARDEN (Acting) of
8 Folsom STATE PRISON and as such has Legal custody of Petitioner.

9 4. Respondent, Jeanne Woodford, is the Director of the
10 CALIFORNIA DEPARTMENT OF CORRECTIONS. SHE IS LEGALLY RESPONSIBLE
11 FOR THE LAWFUL OPERATIONS OF ALL THE PRISONS IN THE STATE, INCLUDING
12 THAT OF FOLSOM STATE PRISON.

III.

Statement of Facts

15 5. On September 18, 1997, Petitioner had a dispute with RORY
16 HAZEL OVER illegal USE OF UTILITIES POWER AT A TRAILER PARK
17 WHERE PetITIONER PREVIOUSLY RESIDED. AFTER moving to a NEW APART-
18 ment, Petitioner continued to RECEIVE PG&E bills in connection with
19 the old RESIDENCE.

20 6. When Petitioner returned to the trailer park, he noticed
21 a lot of what appeared to be homeless people had moved into the
22 park. 1/ When he arrived he also noticed that the company he

23 1-1 THE REASON PetITIONER and many of the OTHER RESIDENTS OF THE PARK
24 had moved out is BECAUSE THE CITY had decided to demolish it and
25 build LOW-INCOME housing. EVERYONE WAS ORDERED to MOVE OUT. By THE
26 TIME PetITIONER RETURNED to SEE WHY HE WAS STILL BEING BILLED, THE CITY
27 had not yet COMPLETED THE PROCESS. THERE WAS still EMPTY TRAILERS AND
28 DEBRIS EVERYWHERE.

1 had RENTED THE PROPANE tanks from had not yet picked them up. The tanks
 2 had been JERRY-RIGGED with cables running into Petitioner's old trailer.

3 7. While Petitioner was inspecting the cables, MR. HAZEL came out
 4 of the trailer and asked him what he was doing. Petitioner explained
 5 that he used to live there and came over to see why he was still being
 6 charged for power consumption. MR. HAZEL then told him, he was now
 7 living THERE with his family. When Petitioner informed him that the
 8 propane company would be out to RETRIEVE the tanks, MR. HAZEL got
 9 upset and an ARGUMENT ensued. When Mr. Hazel began using PROFANITY
 10 and started pointing his FINGER in CLOSE PROXIMITY to Petitioner's
 11 face, Petitioner SLAPPED MR. HAZEL'S hand and the two began
 12 Fighting. The altercation ended when MR. HAZEL was Knocked to the
 13 ground. Petitioner then LEFT and went BACK to his NEW APARTMENT.

14 8. APPROXIMATELY 20 minutes LATER, Sunnyvale INVESTIGATORS
 15 CONFRONTED Petitioner at his APARTMENT. When QUESTIONED about the
 16 incident, he denied any KNOWLEDGE OF it. The OFFICERS then informed
 17 him they WERE AWARE OF his PAROLE STATUS and that the DISTRICT
 18 ATTORNEY had up to ONE YEAR to FILE a MISDEMEANOR COMPLAINT against
 19 him. The OFFICERS did not ARREST him, but told him to just STAY
 20 AWAY FROM MR. HAZEL.

21 9. On November 7, 1997, NEARLY two months later, Petitioner
 22 WAS ARRESTED and CHARGED with ASSAULT in VIOLATION of PENAL CODE
 23 SECTION 245(a)(1). The INFORMATION also CHARGED him with
 24 VIOLATING PENAL CODE SECTIONS 12022.7(a) and 1203(e)(3). (SEE,
 25 EXHIBIT A.) Initially, MR. HAZEL could not BE LOCATED FOR
 26 TRIAL. HOWEVER, he was EVENTUALLY FOUND in a KERN COUNTY
 27 JAIL on DRUG CHARGES and SUBPOENAED to TESTIFY.

1 10. On September 29, 1998, the case was given to the jury.
 2 (SEE JURY INSTRUCTION, ATTACHED AS EXHIBIT B.) On that same
 3 day, the court received a note from the jury requesting a copy
 4 of Penal Code section 1203(e)(3). (EXHIBIT C) Instead of providing
 5 the copy, the court responded: "The question under 1203(e)(3) is
 6 the same as it is under 12021.7 of the Penal Code. In other words,
 7 they ARE Legally synonymous." (SEE AGAIN, EXHIBIT C.)

8 11. On September 30, 1998, the jury found Petitioner guilty
 9 of assault by means of force likely to produce great bodily injury
 10 as charged in the Information. The jury also found him
 11 guilty of inflicting great bodily injury within the meaning of
 12 Penal Code sections 12021.7(a) and 1203(e)(3). On FEBRUARY 4,
 13 1999, the court sentenced Petitioner to a prison term of 28
 14 years to life under California's THREE STRIKES LAW. (EXHIBITS D.)

15 IV.

16 CONTENDIONS

17 A.

18 The Trial Court's Misinterpretation of The
 19 Meaning of Penal Code Section 1203(e)(3)
 20 Violated Petitioner's Sixth Amendment
 21 RIGHT TO DUE PROCESS OF THE LAW

22 V.

23 PRAYER FOR RELIEF

24 Petitioner is without remedy save for habeas corpus.
 25 WHEREFORE, Petitioner pray that the Court:

- 26 1. ISSUE A WRIT OF HABEAS CORPUS;
- 27 2. ISSUE AN ORDER TO SHOW CAUSE;

- 1 3. REVERSE the trial court's judgement
- 2 4. Appoint Legal counsel
- 3 5. Grant ANY and ALL FURTHER RELIEF the Court may deem
4 just and PROPER.

5 Dated: April 3, 05

6 RESPECTFULLY SUBMITTED

7 Michael J. Woodcock

8 MICHAEL J. WOODCOCK

9 IN PRO PER.

10 //

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Memorandum of Points And Authorities

Argument

A.

The Trial Court's Misinterpretation of The Meaning of Penal Code Section 1203(e)(3) Violated Petitioner's Sixth Amendment Right To Due Process of The Law

9 The instruction to the jury that Penal Code section 1203(e)(3), is
10 synonymous with Penal Code section 12022.7, was a legal
11 determination by the trial court. However, RECENT CASE LAW HAS
12 concluded it was "legally incorrect," and requires reversal of
13 Petitioner's conviction. (See People v. Lewis (2004) 120 Cal.
14 App. 4th 837.)

In Lewis, the defendant was charged with assaulting a child with force likely to produce great bodily injury resulting in death within the meaning of Penal Code section 273 (a)(b). After a second trial, the jury found him guilty. At sentencing the court concluded he was presumptively ineligible for probation under Penal Code section 1203.4(e)(3), and sentenced him to life. (Lewis at p. 837.)

Defendant appealed contending, among other things, the trial court misinterpreted Section 1203(e)(3), and erroneously concluded he was presumptively ineligible for probation, because he inflicted great bodily injury on his victim. The genesis of his claim was the jury was not charged with determining whether or not he actually "intended to inflict great bodily injury." He argued that Section 273 (a)(b) only requires a finding of

b.

1 ASSAULT BY MEANS OF FORCE THAT TO A REASONABLE PERSON WOULD LIKELY
 2 PRODUCE GREAT BODILY INJURY. (LEWIS AT P. 851.) ACCEPTING
 3 DEFENDANT'S CONTENTION, THE COURT OF APPEAL REVERSED IN PART. IT
 4 HELD THAT SINCE THE JURY MADE NO FINDING THAT HE "INTENTIONALLY
 5 INFILCTED GREAT BODILY INJURY," AND THAT THE TRIAL COURT DID NOT STATE
 6 ON THE RECORD HE DID SO, IT WAS IMPROPER FOR THE COURT TO FIND
 7 HIM PRESUMPTIVELY INELIGIBLE FOR PROBATION UNDER PENAL CODE SECTION
 8 1203(e)(3). (LEWIS, 120 CAL. APP. 4TH AT P. 853.)

9 IN SUPPORT OF ITS DECISION THE COURT OF APPEAL COMPARED BOTH
 10 THE HISTORY AND LANGUAGE OF PENAL CODE SECTIONS 12022.7 AND 1203,
 11 SUBDIVISIONS (E)(3). THE SAME STATUTES PETITIONER WAS CHARGED
 12 WITH AND IS THE SUBJECT OF THIS APPEAL. THE COURT FOUND THAT EACH
 13 REQUIRES A DIFFERENT FINDING BY THE TRIER OF FACT. THE COURT
 14 EXPLAINED: "SECTION 12022.7 REQUIRES A PERSON 'PERSONALLY INFILCT GREAT
 15 BODILY INJURY' ON ANOTHER IN THE COMMISSION OR ATTEMPTED COMMISSION OF A
 16 FELONY. UNLIKE SECTION 1203, SUBDIVISION (E)(3), IT DOES NOT REQUIRE THAT
 17 THE INFILCTION BE WILLFUL. THE SECTION HAS BEEN INTERPRETED TO REQUIRE
 18 ONLY A GENERAL CRIMINAL INTENT, I.E., THE DEFENDANT NEED NOT INTEND
 19 GREAT BODILY INJURY RESULT, THE ONLY INTENT REQUIRED IS THAT FOR THE
 20 UNDERLYING FELONY." (LEWIS AT P. 853.) THE COURT CONCLUDED
 21 THAT THE ONLY REASONABLE READING OF THE WORD "WILLFUL" IN SECTION
 22 1203(e)(3), REQUIRES THE DEFENDANT'S "INTENT TO CAUSE GREAT BODILY
 23 INJURY," NOT MERELY THAT THE CRIME RESULTED IN SUCH INJURY (IBID.).

24 UNLIKE THE SITUATION IN LEWIS, PETITIONER WAS CHARGED IN
 25 THE INFORMATION WITH VIOLATING 1203(e)(3). MORE SIGNIFICANTLY,
 26 THE JURY WAS ASKED TO DETERMINE WHETHER HE INTENDED TO INFILCT
 27 GREAT BODILY INJURY. THUS, WHEN THE TRIAL COURT INSTRUCTED
 28 THE JURY THAT WHATEVER QUESTIONS THEY HAD REGARDING THE

1 "specific intent" allegation of 1203, should be resolved based on its
 2 findings with respects to 1202.7, left the jury in the untenable
 3 position to assume he was guilty of intentionally inflicting great
 4 bodily injury on his victim.

5 This instruction was clearly prejudicial. It created
 6 an instructional error under Sandstrom v. Montana (1979)
 7 442 U.S. 510, in which the Supreme Court explained: "A STATE
 8 is prohibited from relying on a presumption, rather than
 9 evidence to establish elements of an allegation. When a JURY
 10 is instructed to presume malice from predicate facts, it
 11 still must find the existence of those facts beyond a reasonable
 12 doubt." (SEE also, Mullaney v. Wilbur (1975) 421 U.S. 684.)
 13 Assuming, arguendo, that MR. HAZEL suffered great bodily injury,
 14 the predicate facts here would be that Petitioner "personally"
 15 inflicted it. It does not follow that he "intentionally" meant
 16 to. (LEWIS at 853.)

17 The trial court's instructional error raises serious
 18 questions whether the jury's verdict regarding Section 1203(e)(3),
 19 satisfied the constitutional standard of beyond a reasonable
 20 doubt. The court's error should not be characterized as
 21 harmless, because it affected the jury's ability to fully
 22 digest what the allegation required them to find. The Due
 23 Process Clause of the Federal Constitution guarantees an
 24 accused the right to a jury determination that he is guilty
 25 of every element of the crime with which he is charged.
 26 (SEE United States v. Gaudin (1995) 515 U.S. 506, 509) (SEE also,
 27 Sullivan v. Louisiana (1993) 508 U.S. 275, 278.) The trial
 28 court had an obligation to properly instruct the jury in this

1 CASE, ESPECIALLY WHEN THE JURY INDICATED A NEED FOR CLARIFICATION
 2 OF AN ALLEGATION IT ENDEAVORED TO CONTEMPLATE.

3 ACCORDINGLY, LEWIS IS APPLICABLE TO THE PRESENT CASE.
 4 IT CLARIFIED THE LAW REGARDING PENAL CODE SECTION 1203,
 5 SUBDIVISIONS (E)(3) AND 12022.7(A). HERE, AS IN LEWIS,
 6 THE TRIAL COURT MISINTERPRETED THE LEGISLATIVE DISTINCTION
 7 BETWEEN THESE TWO STATUTES AND WHAT A JURY MUST
 8 FIND BEYOND A REASONABLE DOUBT.

9 THEREFORE, BECAUSE OF THE SANDSTROM INSTRUCTIONAL
 10 ERROR BY THE TRIAL COURT, THE MISINTERPRETATION OF THE
 11 LAW, AND THE FUNDAMENTAL UNFAIRNESS OF THE PROCESS TO
 12 WHICH HE WAS SUBJECTED, PETITIONER'S CONVICTION STANDS
 13 ON CONSTITUTIONALLY INFIRM GROUNDS AND MUST BE STRICKEN.

14
Conclusion

15
 16 FOR THE REASONS STATED ABOVE, PETITIONER PRAYS
 17 THAT THE COURT WILL GRANT A WRIT OF HABEAS CORPUS.

18
 19 Dated: Apr. 13, 05

Respectfully submitted,

20
Michael J. Woodcock
 21 Michael J. Woodcock

22 In Pro Poco.
 23

24 //
 25 //
 26 //
 27 //
 28 //

Exhibit A

NO. _____

(The Information)

The Information in this case charges that the defendant, MICHAEL JEROME WOODCOCK committed the following felonies, to wit:

COUNT ONE

That in the County of Santa Clara, State of California, on or about September 18, 1997, the said defendant, MICHAEL JEROME WOODCOCK, committed a felony, to wit: a violation of CALIFORNIA PENAL CODE SECTION 245(A)(1) (ASSAULT BY MEANS OF FORCE LIKELY TO PRODUCE GBI) in that the said defendant did commit an assault upon the person of RORY HAZEL, by means of force likely to produce great bodily injury.

It is further alleged that in the commission and attempted commission of the foregoing offense, the said defendant, MICHAEL JEROME WOODCOCK, personally inflicted great bodily injury upon a person not an accomplice, to wit: RORY HAZEL, within the meaning of Sections 12022.7(a) and 1203(e)(3) of the Penal Code.

Judge

[Signature] 135

Exhibit B

PART IV – The Charges – Definitions and Elements

CALJIC 3.30 CONCURRENCE OF ACT AND GENERAL CRIMINAL INTENT

3.30

In the crime and allegation charged in Count 1, and the crime of assault which is a lesser crime, there must exist a union or joint operation of act or conduct and general criminal intent. General intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.

CALJIC 9.00 ASSAULT – DEFINED (Pen. Code, §240)

9.00

Every person who commits an assault upon another person is guilty of a violation of Penal Code section 240, a crime.

In order to prove an assault, each of the following elements must be proved:

1. A person willfully and unlawfully committed an act which by its nature would probably and directly result in the application of physical force on another person; and
2. At the time the act was committed, the person had the present ability to apply physical force to the person of another.

"Willfully" means that the person committing the act did so intentionally.

To constitute an assault, it is not necessary that any actual injury be inflicted. However, if an injury is inflicted it may be considered in connection with other evidence in determining whether an assault was committed and, if so, the nature of the assault.

CALJIC 9.02
ASSAULT WITH BY
MEANS OF FORCE LIKELY TO PRODUCE
GREAT BODILY INJURY
(Pen. Code, § 245, subd. (a)(1), (2))

9.02

Defendant is accused in Count 1 of having violated section 245, subdivision (a)(1) of the Penal Code, a crime.

Every person who commits an assault upon the person of another by means of force likely to produce great bodily injury is guilty of a violation of section 245, subdivision (a)(1) of the Penal Code, a crime.

Great bodily injury refers to significant or substantial bodily injury or damage; it does not refer to trivial or insignificant injury or moderate harm.

In order to prove this crime, each of the following elements must be proved:

1. A person was assaulted; and
2. The assault was committed by means of force likely to produce great bodily injury.

GREAT BODILY INJURY – FURTHER EXPLAINED

9.02A

Great bodily injury does not require that the victim suffer permanent, prolonged, or protracted disfigurement, impairment, or loss of bodily functions. Evidence of multiple abrasions and lacerations, swelling, and bruising may or may not constitute great bodily injury, depending on their severity and the facts of the case.

CALJIC 17.20
INFILCTION OF GREAT BODILY HARM
(Pen. Code, 12022.7(a))

17.20

It is alleged that in the commission or attempted commission of the crime therein described the defendant personally inflicted great bodily injury on a person not an accomplice to the crime.

People v. Woodcock, # 202097
Final Instructions
Page 12 of 17

d 137

If you find a defendant guilty of Assault with Force Likely to do Great Bodily Injury as charged in Count 1, you must determine whether that defendant personally inflicted great bodily injury on some person not an accomplice to the crime in the commission or attempted commission of the crime charged in Count 1.

"Great bodily injury," as used in this instruction, means a significant or substantial physical injury. Minor, trivial or moderate injuries do not constitute great bodily injury.

The People have the burden of proving the truth of this allegation. If you have a reasonable doubt that it is true, you must find it to be not true.

Include a special finding on that question in your verdict, using a form that will be supplied for that purpose.

CALJIC 9.08

ASSAULT WITH HANDS OR FISTS

9.08

An assault by means of force likely to produce great bodily injury may be committed with the hands or fists. Proof of such an assault need not show that the defendant actually injured the other person. However, there must be proof that the manner of the assault was likely to produce great bodily injury upon another person.

CALJIC 9.11

INSULTING WORDS – NOT JUSTIFICATION
FOR ASSAULT

9.11

No oral words of abuse, insult or reproach addressed to or said about a person, however insulting or objectionable the words may be, if unaccompanied by any threat or apparent threat of great bodily injury, or any assault upon the person will justify an assault by any means of force likely to produce great bodily injury. The provocation of words alone does not constitute a defense to a charge of having committed such an assault.

CALJIC 17.10
CONVICTION OF LESSER INCLUDED
OR LESSER RELATED OFFENSE – IMPLIED
ACQUITTAL-FIRST

17.10

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, you may nevertheless convict him of any lesser crime, if you are convinced beyond a reasonable doubt that the defendant is guilty of the lesser crime.

The crime of Assault is lesser to that of Assault By Means of Force Likely to Do Great Bodily Injury charged in Count 1.

Thus, you are to determine whether the defendant is guilty or not guilty of the crime charged or of any lesser crime. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it productive to consider and reach a tentative conclusion on all charges and lesser crimes before reaching any final verdict. However, the court cannot accept a guilty verdict on a lesser crime unless you have unanimously found the defendant not guilty of the charged crime.

Part V – Concluding Instructions

CALJIC 17.30
JURY NOT TO TAKE CUE FROM THE JUDGE

17.30

I have not intended by anything I have said or done, or by any questions that I may have asked, or by any ruling I may have made, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness.

If anything I have done or said has seemed to so indicate, you will disregard it and form your own conclusion.

Exhibit C

Received by:
Date:
Time:

Jury Note # 1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

vs

MICHAEL JEROME WORCOCIC

Defendant,

No. 202097

We, the jury in the above-entitled cause, request the following:

Copy of Penal Code Section 1203(e)(3)

The question under 1203(e)(3) is the same as it
is under 12022.7 of the Penal Code.

In other words, they are legally synonymous.

- J. Lee

Date: 9/29

#1

123A

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA

3 THE PEOPLE OF THE STATE)
4 OF CALIFORNIA,)
5) Information No. 202097
6 vs.)
7) VERDICT OF THE JURY
8 MICHAEL JEROME WOODCOCK,)
9)
10 Defendant.)

11 COUNT ONE

12 WE, the Jury, in the above-entitled case, find the Defendant,
13 MICHAEL JEROME WOODCOCK, Guilty of a Felony, to wit:
14 (Guilty/Not Guilty)
15 (ASSAULT BY MEANS OF FORCE LIKELY TO PRODUCE GREAT BODILY INJURY), in
16 violation of Penal Code Section 245(A)(1), as charged in Count One of
17 the Information.

18 WE, the Jury, find the allegation that in the commission and
19 attempted commission of the foregoing offense, the said defendant,
20 MICHAEL JEROME WOODCOCK, personally inflicted great bodily injury upon
21 a person not an accomplice, to wit: RORY HAZEL, within the meaning of
22 Sections 12022.7(a) and 1203(e)(3) of the Penal Code to be

23 True
24 (True/Not True)

25 LESSER INCLUDED OFFENSE

26 WE, the Jury, in the above-entitled case, find the Defendant,
27 MICHAEL JEROME WOODCOCK, of a Misdemeanor, to
28 wit: (ASSAULT), in violation of Penal Code Section 240, as charged in
Count One of the Information.

DATED: September 30, 1998

#1

FOREPERSON

copy attached to m.o.

121

CR-292

**ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]**

<input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF. <input type="checkbox"/> MUNICIPAL BRANCH OR JUDICIAL DISTRICT:	SANTA CLARA HALL OF JUSTICE		
PEOPLE OF THE STATE OF CALIFORNIA vs DEFENDANT: MICHAEL JEROME WOODCOCK	DOB: 1/13/66	202097	
AKA:		-B	
CIM:		-C	
BOOKING #: 97537026	<input type="checkbox"/> NOT PRESENT	-D	
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT	<input type="checkbox"/> AMENDED <input type="checkbox"/> ABSTRACT		
DATE OF HEARING 02 04 99	DEPT. NO. 90	JUDGE EDWARD F. LEE	
CLERK C. JOHNSON	REPORTER B. PASTORINO	PROBATION NO. OR PROBATION OFFICER J. HAMILTON	
COUNSEL FOR PEOPLE J. LUFT		COUNSEL FOR DEFENDANT D. LEE-ADO	<input checked="" type="checkbox"/> APPTD.

1. Defendant was convicted of the commission of the following felonies:

Additional counts are listed on attachment
1 (number of pages attached)

CNT	CODE	SECTION NO	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO/DATE/YEAR)	CONVICTED BY				654 STAY
						JURY	COURT	PLEA	CONCURRENT	
01	PC	245A(1)	ASSAULT BY MEANS OF FORCE LIKELY TO -PRODUCE GREAT BODILY INJURY	97	09/30/98	X				
					/ /					
					/ /					
					/ /					
					/ /					
					/ /					

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
01	12022.7A	3y							3 0

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
PC667(b-i)	*	PC667(b-i)	*	PC667(b-i)	*			
PC667(a)	S	PC667(a)	S					
PC667.5(b)	S	PC667.5(b)	S					

Defendant was sentenced to State Prison for an INDETERMINATE TERM:

4. For LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____
 5. For LIFE WITH POSSIBILITY OF PAROLE on counts _____
 6. For 25 years to life, WITH POSSIBILITY OF PAROLE on counts 1
 PLUS enhancement time shown above.
 7. Additional determinate term (see CR-290). 3yrs
 8. Defendant was sentenced pursuant to PC 667(b)-(i) or PC 1170.12 PC 667.61 PC 667.7 PC 667.9
 other (specify): _____

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.
(Continued on reverse)

Form Adopted by the
Judicial Council of California
CR-292 (Rev January 1, 1999)

**ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]**

212 Penal Code, §§
1213, 1213.5

Exhibit A-1

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: MICHAEL JEROME WOODCOCK				
202097	-A	-B	-C	-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

- a. RESTITUTION FINE of: \$ 5600.00 per PC 1202.4(b) forthwith per PC 2085.5.
- b. RESTITUTION FINE of: \$ 5600.00 per PC 1202.45 suspended unless parole is revoked.
- c. RESTITUTION of: \$ _____ per PC 1202.4(f) to victim(s)* Restitution Fund
(*List victim name(s) if known and amount breakdown in item 11, below.)
(1) Amount to be determined.
(2) Interest rate of: _____ % (not to exceed 10% per PC 1204.4(f)(3)(F)).
- d. LAB FEE of: \$ _____ for counts: _____ per H&SC 11372.5(a).
- e. DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a).
- f. FINE of: \$ _____ per PC 1202.5.

10. TESTING

- a. AIDS pursuant to PC 1202.1 other (specify):
- b. DNA pursuant to PC 290.2 other (specify):

11. Other orders (specify):

ADVISED 5yr PAROLE/APPEAL RIGHTS;\$140.50 CRIMINAL JUSTICE ADMIN FEE
-SANTA CLARA CO;HEARING MOTION RE: ROMERO-DENIED;
TOTAL TERM CDC. = 28yrs TO LIFE;

12. Execution of sentence imposed

- a. at initial sentencing hearing.
- b. at resentencing per decision on appeal.
- c. after revocation of probation.
- d. at resentencing per recall of commitment. (PC 1170(d).)
- e. other (specify):

13. CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
202097	-A 105	92	13 <input type="checkbox"/> 4019 <input checked="" type="checkbox"/> X 2933.1
	-B	L	<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
	-C		<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
	-D		<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
DATE SENTENCE PRONOUNCED: 02 04 99	SERVED TIME IN STATE INSTITUTION: <input type="checkbox"/> DMH <input type="checkbox"/> CDC <input type="checkbox"/> CRC		

14. The defendant is remanded to the custody of the sheriff forthwith after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to the reception center designated by the director of the California Department of Corrections.
 other (specify):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

R. JIMENEZ

DATE

FEBRUARY 10, '99

213

FILED

APR 12 2005

PROOF OF SERVICE BY MAILI, Michael J. Woodcock, DECLARE:

I AM OVER THE AGE OF 18, I AM (AM NOT) A PARTY TO THIS ACTION,
AND A RESIDENT OF FOLSOM STATE PRISON IN THE COUNTY OF SACRAMENTO,
STATE OF CALIFORNIA.

MY PRISON NUMBER: H-27629, MY PRISON ADDRESS: P.O. BOX
950, FOLSOM, CALIFORNIA 95763.

ON April 3, 2005, I SERVED A COPY OF THE FOLLOWING
DOCUMENT:

Petition for Writ of Habeas Corpus

ON THE FOLLOWING PARTIES BY PLACING THE DOCUMENTS IN A SEALED
ENVELOPE WITH POSTAGE FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT
BOX SO PROVIDED AT FOLSOM STATE PRISON (MAILBOX RULE), REPRESA,
CALIFORNIA, ADDRESSED AS FOLLOWS:

George Kennedy, District Attorney
County of Santa Clara
191 North First Street
San Jose, California 95113

THERE IS DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO
ADDRESSED, AND/OR THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE
PLACE OF MAILING AND THE PLACE SO ADDRESSED.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.

EXECUTED April 3, 2005, AT REPRESA, CALIFORNIA.

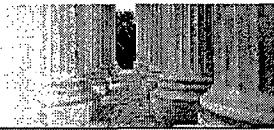
Michael J. Woodcock
<signature here>

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY S. Chu DEPUTY

EXHIBIT 3

CALIFORNIA APPELLATE COURTS

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Opinions

Trial Court Case: 202097

Court of Appeal Case: H029069



Division:

Case Caption: Woodcock on Habeas Corpus

Case Type:

Filing Date: 07/18/2005

Oral Argument Date/Time:

Cross Referenced Cases

[H019683 The People v. Woodcock](#)

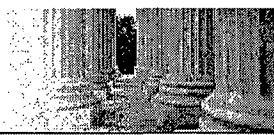
[H030450 Woodcock v. Superior Court \(People\)](#)

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CALIFORNIA APPELLATE COURTS

Case Information



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Opinions

Woodcock on Habeas Corpus**Case Number H029069**
C|C
 home

Date	Description	Notes
07/18/2005	Petition for a writ of habeas corpus filed.	
07/28/2005	Case fully briefed.	
07/28/2005	Order denying petition filed.	The petition for writ of habeas corpus is denied. (pbm, rjm, wcd)
07/28/2005	Case complete.	
09/27/2005	Record purged - to be shipped to state records center.	

[Click here](#) to request automatic e-mail notifications about this case.

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